



August 29, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-3825

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151281.

The City of El Paso (the "city") received three written requests for certain records pertaining to a closed police investigation of a double murder/suicide. You state that the city will release the audiotape that is responsive to item two of the second request, a redacted version of the document that is responsive to items four and six of the second request, and a redacted version of the information that is responsive to item two of the third request. You note that the information at issue was partially the subject of a prior open records ruling in which this office determined that some of the information at issue here was made confidential under section 261.201 of the Family Code. *See* Open Records Letter No. 2000-4803 (2000). You now inform this office that the "facts and circumstances" surrounding the requested information may have changed and you question whether the city may continue to rely on Open Records Letter No. 2000-4803 as authority for withholding the information currently being requested.¹

In Open Records Decision No. 673 (2001), this office determined that for purposes of section 552.301 of the Government Code, a governmental body may rely on a "previous determination" by this office that information is excepted from public disclosure with regard to future requests for the precise same information if, among other requirements, the law, facts, and circumstances on which the ruling was based have not changed. In Open Records

¹You note, however, that one of the requests seeks information this office previously held in Open Records Letter No. 2000-4803 to be confidential under section 772.318 of the Health and Safety Code. Because the law, facts, and the circumstances pertaining to that aspect of our prior ruling have not changed, we do not further address this aspect of your request. *See* Open Records Decision No. 673 (2001).

Letter No. 2000-4803, this office held that some of the information at issue here, *i.e.*, tape recordings of 911 telephone calls, transcripts, and the related computer-assisted dispatch records were made confidential under section 261.201(a) of the Family Code and, therefore, must be withheld from the public pursuant to section 552.101 of the Government Code.²

Section 261.201 of the Family Code provides in pertinent part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) *except as otherwise provided in this section*, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

(b) A court may order the disclosure of information that is confidential under this section if:

- (1) a motion has been filed with the court requesting the release of the information;
- (2) a notice of hearing has been served on the investigating agency and all other interested parties; and
- (3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:
 - (A) essential to the administration of justice; and
 - (B) not likely to endanger the life or safety of:
 - (i) a child who is the subject of the report of alleged or suspected abuse or neglect;

²Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.)

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

Fam. Code § 261.201(a), (b) (emphasis added).

You have provided this office with a court order that holds that the disclosure of the information at issue here "is essential to the administration of justice and not likely to endanger the life or safety of any person." See *In the Estate of Irene B. Garcia, Deceased*, No. 2000-P00485 (Probate Ct. El Paso County, Tex. Apr. 6, 2001). Although the order requires the release of the information to the petitioners, it places no restrictions on the petitioners with regard to any subsequent release of the information or prohibits the city's release of the information to any other individual requesting the information. It thus appears to this office that the court has determined that the confidentiality conferred by section 261.201 of the Family Code is no longer applicable to the information at issue. We, therefore, conclude that the law, facts, and circumstances on which Open Records Letter No. 2000-4803 was based have changed and that the information at issue is no longer made confidential under section 261.201 of the Government Code. Because the court has ordered the release of the information, we conclude that the city must release the information at issue to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

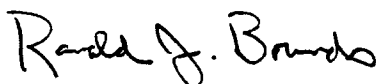
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/seg

Ref: ID# 151281

Enc. Submitted documents and audiotape

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